

§ 2.1509

(8) A certification by the presiding officer that the record contains sufficient information for the Commission to make a reasoned determination on the Commission-identified issue; and

(9) At the option of the presiding officer, a summary of the information in the record and a proposed resolution of the Commission-identified issue with a supporting basis.

§ 2.1509 Ex parte communications and separation of functions.

Section 2.347 applies in a legislative hearing. Section 2.348 applies in a legislative hearing only where the hearing addresses an issue certified to the Commission under § 2.335(d), and then only with respect to the underlying contested matter.

APPENDIX A TO PART 2 [RESERVED]

APPENDIX B TO 10 CFR PART 2—MODEL MILESTONES TO BE USED BY A PRESIDING OFFICER AS A GUIDELINE IN DEVELOPING A HEARING SCHEDULE FOR THE CONDUCT OF AN ADJUDICATORY PROCEEDING IN ACCORDANCE WITH 10 CFR 2.332.

I. MODEL MILESTONES FOR A HEARING ON AN ENFORCEMENT ACTION CONDUCTED UNDER 10 CFR PART 2, SUBPART G

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart G. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of the proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the complexity of the issues, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues to be adjudicated in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and G.

The model milestones are based upon the following assumptions: (i) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in ac-

10 CFR Ch. I (1–1–06 Edition)

cordance with 10 CFR 2.305. In some cases, preparation of direct testimony and motions for summary disposition can proceed once initial mandatory disclosures have been made. The time periods set forth in the model milestones reflect these assumptions.

MODEL MILESTONES

[10 CFR Part 2, Subpart G]

• Within 20 days of date of enforcement order:	Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due.
• Within 100 days of enforcement order:	Presiding officer issues order on hearing request by person who is subject of enforcement order.
• Within 25 days of presiding officer decision granting hearing:	Presiding officer sets initial schedule for the proceeding.
• Within 145 days of presiding officer decision granting hearing:	Discovery complete.
• Within 155 days of presiding officer decision granting hearing:	Motions for summary disposition due.
• Within 235 days of presiding officer decision granting hearing:	Presiding officer decisions on motions for summary disposition.
• Within 245 days of presiding officer decision granting hearing:	Prehearing conference (optional); presiding officer sets schedule for remainder of proceeding.
• Within 275 days of presiding officer decision granting hearing:	Written testimony filed.
• Within 90 days of end of evidentiary hearing and closing of record:	Presiding officer issues initial decision.

II. MODEL MILESTONES FOR HEARINGS CONDUCTED UNDER 10 CFR PART 2, SUBPART L

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart L, including those on applications for combined licenses (COLs), renewed licenses, and license amendments. While such proceedings differ insofar as the scope and complexity of the NRC staff reviews for the requested actions may vary, such differences will be reflected in the staff's schedule for issuing its review documents in a particular type of action. Because the milestones are keyed to the staff's review schedule, separate milestones are not identified for proceedings on the different types of actions.

As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the number of contentions admitted, the complexity of the issues, the

Nuclear Regulatory Commission

Pt. 2, App. B

NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and L.

The model milestones include only the most significant events in the proceeding and are based upon the following assumptions: (i) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) an oral hearing under 10 CFR 2.1207 will be held rather than a written hearing under 10 CFR 2.1208; and (iii) the final Safety Evaluation Report (SER) and final environmental document will be issued simultaneously. The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES

[10 CFR Part 2, Subpart L]

<ul style="list-style-type: none"> • Within 140 of publication days of notice in FEDERAL REGISTER: 	Presiding officer decision on intervention petitions and admission of contentions.
<ul style="list-style-type: none"> • Within 55 days of presiding officer decision granting intervention and admitting contentions: 	Presiding officer to set initial schedule for proceeding, based on staff schedule for issuing draft and final SERs and any necessary NEPA document.
<ul style="list-style-type: none"> • Within 30 days of issuance of SER and any necessary NEPA document: 	Proposed late-filed contentions on SER and necessary NEPA documents filed; motions for summary disposition on previously admitted contentions due.
<ul style="list-style-type: none"> • Within 85 days of issuance of SER and NEPA document: 	Presiding officer decision on admission of proposed late-filed contentions and motions for summary disposition; presiding officer sets schedule for remainder of proceeding.
<ul style="list-style-type: none"> • Within 14 days after presiding officer decision on amended/late-filed contentions: 	All parties complete updates of mandatory disclosures.
<ul style="list-style-type: none"> • Within 115 days of issuance of SER and NEPA document: 	Motions for summary disposition due.
<ul style="list-style-type: none"> • Within 155 days of issuance of SER and NEPA document: 	Written direct testimony filed.
<ul style="list-style-type: none"> • Within 175 days of issuance of SER and NEPA document: 	Evidentiary hearing begins.
<ul style="list-style-type: none"> • Within 90 days of end of evidentiary hearing and closing of record: 	Presiding officer issues initial decision.

III. MODEL MILESTONES FOR A HEARING ON A TRANSFER OF A LICENSE CONDUCTED UNDER 10 CFR PART 2, SUBPART M

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart M on applications for license transfer. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C and M.

The model milestones include only the most significant events in the proceeding, and are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) the parties do not file a joint request under 10 CFR 2.1308 for a hearing consisting of written comments; (iii) the final Safety Evaluation Report (SER) is not necessary to resolve the issues to be litigated; (iv) the Commission itself does not serve as the presiding officer; and (v) the Commission does not order further taking of testimony after the presiding officer certifies the record to the Commission under 10 CFR 2.1319(f). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES

[10 CFR Part 2, Subpart M]

<ul style="list-style-type: none"> • Within 100 days of publication of FEDERAL REGISTER notice of opportunity for hearing: 	Presiding officer decision on intervention petitions and admission of contentions.
<ul style="list-style-type: none"> • Within 30 days of order granting hearing petitions: 	NRC staff and other parties complete mandatory disclosures.
<ul style="list-style-type: none"> • Within 12 days of completion of mandatory disclosures: 	Presiding Officer issues scheduling order to address, inter alia, scheduling of oral hearing, filing of written statements of position, direct testimony, and rebuttal testimony.
<ul style="list-style-type: none"> • Within 45 days of scheduling order: 	Oral hearing commences.

Pt. 2, App. D

10 CFR Ch. I (1–1–06 Edition)

MODEL MILESTONES—Continued

[10 CFR Part 2, Subpart M]

• Within 25 days after hearing ends:	Presiding officer certifies hearing record to the Commission.
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IV. MODEL MILESTONES FOR A HEARING ON AN ENFORCEMENT ACTION CONDUCTED UNDER 10 CFR PART 2, SUBPART N

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart N. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules based upon all relevant information. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and N.

The model milestones are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305. The only discovery provided is the mandatory disclosure made by each party pursuant to 10 CFR 2.336.

MODEL MILESTONES

[10 CFR Part 2, Subpart N]

• Within 20 days of date of enforcement order:	Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due, including joint motion to use Subpart N procedures.
• Within 50 days of date of enforcement order:	Presiding officer decision on requests for hearing and confirms use of Subpart N procedures (note: if presiding officer concludes that Subpart N procedures should not be used, the Model Milestone for Enforcement Actions under Subpart G are applicable).
• Within 30 days of presiding officer decision granting hearing:	Mandatory disclosures complete.
• Within 40 days of presiding officer decision granting hearing:	Prehearing conference to specify issues for hearing and set schedules for remaining course of proceeding.
• Within 60 days of presiding officer decision granting hearing:	Evidentiary hearing begins.
• Within 30 days of end of evidentiary hearing and closing of record:	Presiding officer issues initial decision.

[70 FR 20462, Apr. 20, 2005]

APPENDIX C TO PART 2 [RESERVED]

APPENDIX D TO PART 2—SCHEDULE FOR THE PROCEEDING ON CONSIDERATION OF CONSTRUCTION AUTHORIZATION FOR A HIGH-LEVEL WASTE GEOLOGIC REPOSITORY.

Day	Regulation (10 CFR)	Action
0	2.101(f)(8), 2.105(a)(5).	Federal Register Notice of Hearing.
30	2.309(b)(2)	Petition to intervene/request for hearing, w/contentions.
30	2.309(b)(2)	Petition for status as interested government participant.
55	2.315(c)	Answers to intervention & interested government participant Petitions.
62	2.309(h)(1)	Petitioner's response to answers.
70	2.1021	First Prehearing conference.
100	2.309(h)(2)	First Prehearing Conference Order identifying participants in proceeding, admitted contentions, and setting discovery and other schedules.
110	2.1021	Appeals from First Prehearing Conference Order.
120	.....	Briefs in opposition to appeals.
150	2.1021, 2.329	Commission ruling on appeals for First Prehearing Conference Order.
548	.....	NRC Staff issues SER.
578	2.1022	Second Prehearing Conference.
608	2.1021, 2.1022	Discovery complete; Second Prehearing Conference Order finalizes issues for hearing and sets schedule for prefiled testimony and hearing.
618	2.1015(b)	Appeals from Second Prehearing Conference Order.
628	2.1015(b), c.f. 2.710(a).	Briefs in opposition to appeals; last date for filing motions for summary disposition.
648	c.f. 2.710(a)	Last date for responses to summary disposition motions.
658	2.710(a)	Commission ruling on appeals from Second Prehearing Conference Order; last date for party opposing summary disposition motion to file response to new facts and arguments in any response supporting summary disposition motion.
698	2.1015(b)	Decision on summary disposition motions (may be determination to dismiss or to hold in abeyance).
720	c.f. 2.710(a)	Evidentiary hearing begins.
810	.....	Evidentiary hearing ends.
840	2.712(a)(1)	Applicant's proposed findings.
850	2.712(a)(2)	Other parties' proposed findings.
855	2.712(a)(3)	Applicant's reply to other parties' proposed findings.
955	2.713	Initial decision.
965	2.342(a), 2.345(a), 2.1015(c)(1).	Stay motion. Petition for reconsideration, notice of appeal.
975	2.342(d), 2.345(b).	Other parties' responses to stay motion and Petitions for reconsideration.
985	.....	Commission ruling on stay motion.
995	2.1015(c)(2)	Appellant's briefs.
1015	2.1015(c)(3)	Appellee's briefs.

Nuclear Regulatory Commission

Pt. 4

Day	Regulation (10 CFR)	Action
1055	2.1023 Supp. Info.	Completion of NMSS and Commission supervisory review; issuance of construction authorization; NWP 3-year period tolled.
1125	.....	Commission decision.

[69 FR 2275, Jan. 14, 2004; 69 FR 25997, May 11, 2004]

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FED- ERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

GENERAL PROVISIONS

Sec.

- 4.1 Purpose and scope.
- 4.2 Subparts.
- 4.3 Application of this part.
- 4.4 Definitions.
- 4.5 Communications and reports.
- 4.6 Maintenance of records.
- 4.8 Information collection requirements: OMB approval.

Subpart A—Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974

DISCRIMINATION PROHIBITED

- 4.11 General prohibition.
- 4.12 Specific discriminatory actions prohibited.
- 4.13 Employment practices.
- 4.14 Medical emergencies.

ASSURANCES REQUIRED

- 4.21 General requirements.
- 4.22 Continuing Federal financial assistance.
- 4.24 Assurances from institutions.

COMPLIANCE INFORMATION

- 4.31 Cooperation and assistance.
- 4.32 Compliance reports.
- 4.33 Access to sources of information.
- 4.34 Information to beneficiaries and participants.

CONDUCT OF INVESTIGATIONS

- 4.41 Periodic compliance reviews.
- 4.42 Complaints.
- 4.43 Investigations.
- 4.44 Resolution of matters.
- 4.45 Intimidatory or retaliatory acts prohibited.

MEANS OF EFFECTING COMPLIANCE

- 4.46 Means available.
- 4.47 Noncompliance with §4.21.
- 4.48 Termination of or refusal to grant or to continue Federal financial assistance.
- 4.49 Other means authorized by law.

OPPORTUNITY FOR HEARING

- 4.51 Notice of opportunity for hearing.

HEARINGS AND FINDINGS

- 4.61 Presiding officer.
- 4.62 Right to counsel.
- 4.63 Procedures, evidence, and record.
- 4.64 Consolidated or joint hearings.

DECISIONS AND NOTICES

- 4.71 Initial decision or certification.
- 4.72 Exceptions and final decision.
- 4.73 Rulings required.
- 4.74 Content of orders.
- 4.75 Post termination proceedings.

JUDICIAL REVIEW

- 4.81 Judicial review.

EFFECT ON OTHER REGULATIONS; FORMS AND INSTRUCTIONS

- 4.91 Effect on other regulations.
- 4.92 Forms and instructions.
- 4.93 Supervision and coordination.

Subpart B—Regulations Implementing Sec- tion 504 of the Rehabilitation Act of 1973, as Amended

- 4.101 Definitions.

DISCRIMINATORY PRACTICES

- 4.121 General prohibitions against discrimination.
- 4.122 General prohibitions against employment discrimination.
- 4.123 Reasonable accommodation.
- 4.124 Employment criteria.
- 4.125 Preemployment inquiries.
- 4.126 General requirement concerning accessibility.
- 4.127 Existing facilities.
- 4.128 New construction.

ENFORCEMENT

- 4.231 Responsibility of applicants and recipients.
- 4.232 Notice.
- 4.233 Enforcement procedures.

Subpart C—Regulations Implementing the Age Discrimination Act of 1975, as Amended

GENERAL

- 4.301 Purpose and scope.
- 4.302 Application of this subpart.